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INTERNATIONAL: Airbus-Boeing dispute puts WTO to test

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Abstract (Document Summary)

The WTO is considering complaints and counter-complaints placed before it over subsidies granted to rival aircraft manufacturers Airbus and Boeing.

The fact that the EU and the United States have filed complaints and counter-complaints to the WTO over subsidies granted to Airbus and Boeing reflects the failure of the two parties to manage their dispute through a 1992 bilateral agreement. With responsibility transferred to the WTO, different rules come into play. Prospects for key Airbus and Boeing programmes could be affected if the complaints are found justified; and the dispute is a challenge to the WTO itself.

Full Text (1096 words)

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EVENT: The WTO is considering complaints and counter-complaints placed before it over subsidies granted to rival aircraft manufacturers Airbus and Boeing.

SIGNIFICANCE: The fact that the EU and the United States have filed complaints and counter-complaints to the WTO over subsidies granted to Airbus and Boeing reflects the failure of the two parties to manage their dispute through a 1992 bilateral agreement. With responsibility transferred to the WTO, different rules come into play. Prospects for key Airbus and Boeing programmes could be affected if the complaints are found justified; and the dispute is a challenge to the WTO itself.

ANALYSIS: Since the early 1990s, the United States and the EU have relied on bilateral discussion and agreement to manage their differences over support given to their domestic producers of large civil aircraft. In doing so, they have by-passed multilateral trade rules to which both, as WTO members, are theoretically subject. The separate US and EU complaints of October 6 to the WTO signal the collapse of this bilateral approach, which follows the rise of Airbus to equality with Boeing in the world market for large aircraft, and an impending battle between Boeing's recently-launched 7E7 "Dreamliner" and the proposed Airbus 350 ([see INTERNATIONAL: Will Airbus disturb the Dreamliner? - October 25, 2004](#)).

Failed bilateral approach The WTO's predecessor, the GATT, had rules on export subsidies for manufactured goods, including aircraft. However, they were weak, as were GATT dispute procedures. Although a 1979 GATT agreement, sponsored by the United States and the EU, introduced free trade in civil aircraft, engines and parts, it added no new disciplines on subsidies. In this context, the 1992 EU-US Agreement on Large Civil Aircraft (LCA) was a step forward, placing ceilings on both direct and indirect subsidies:

Direct subsidies, such as repayable launch aid given to Airbus, were not to exceed 33% of development costs for new aircraft programmes.

For indirect support, such as benefits received by Boeing through NASA and military programmes, the ceiling was to be 3%

of the LCA industry's turnover.

In recent weeks, the EU and the United States have each argued at length that, while they themselves have respected their commitments under the agreement, the other side has not.

WTO rules With US denunciation of the LCA Agreement, and the two complaints before the WTO, this mutual finger-pointing has become largely irrelevant. The subsidy ceilings set by that agreement have no counterpart in the much more restrictive current WTO rules, embodied in the 1994 Uruguay Round Agreement on Subsidies and Countervailing Measures (SCM). This complex agreement (see INTERNATIONAL: WTO/Subsidies - January 13, 1999):

prohibits subsidies by developed countries contingent on export performance or use of domestic over imported goods;

permits a defined list of subsidies including those that are "non-specific" (ie not targeted on particular enterprises or industries); and

makes all other subsidies "actionable".

This last point means that WTO members can claim compensation should such subsidies cause or threaten injury to their domestic industry, deprive them of benefits expected under the GATT rules, or cause "serious prejudice" by displacing or impeding their own industry's exports, undercutting or depressing prices, or causing loss of sales.

These rules are backed up by the WTO's dispute settlement mechanism, which -- unlike the old GATT procedures -- denies a losing party any means of blocking decisions by dispute panels or the WTO Appellate Body.

Examples Two relevant cases demonstrate the combined effectiveness of the WTO subsidy rules and dispute procedures. They are:

the EU complaint about tax breaks under the Extraterritorial Income Exclusion Act (ETI), found to be an illegal subsidy and abolished last month (see UNITED STATES: Corporate tax cuts may not appease EU - October 12, 2004); and

mutual complaints by Canada and Brazil about export subsidies to each other's respective domestic producers of regional jets, Embraer and Bombardier (both found illegal, eventually leading to settlements).

The US and EU complaints to the WTO are both based almost entirely in terms on SCM provisions, claiming that the other side's support measures are either prohibited export subsidies, or are actionable because they are given specifically to Airbus and Boeing and cause or threaten damage or "serious prejudice". The US complaint focuses on launch aid, public investment, forgiveness of debt, and R&D loans given to Airbus. The EU claims that Boeing benefits from NASA and Department of Defence programmes, subsidies from the states of Washington, Kansas and Illinois, and tax advantages under the FSC scheme.

Outlook The dispute process starts with a 60-day period for consultations aimed at settling the dispute bilaterally. This remains possible. Failing settlement, a panel or panels of experts will be established, perhaps in January, to examine the complaints. Reports will not emerge until late next year, and will certainly be appealed by the losers.

The outcome may resemble that of the Brazil-Canada complaints. Here both sides were found in breach of their WTO obligations, and faced an unpalatable choice between withdrawing the subsidies (with possible far-reaching effects on Airbus, Boeing, their suppliers and the world market for civil aircraft) and paying massive compensation. While the EU complaint includes support for the 7E7, the United States does not mention the projected A350. However, the US Trade Representative's briefing on the complaint shows that it aims to limit subsidies to Airbus.

WTO implications Claims that the US and EU complaints are imposing an intolerable additional burden on the WTO, threatening its dispute settlement mechanism and the Doha Round trade negotiations are unfounded. The WTO dispute system is indeed under pressure, with several cases of high economic and political significance (for instance, the sugar and cotton complaints against the EU and the United States) yet to be resolved. The addition of Airbus/Boeing will not help.

However, the system has successfully handled the ETI complaint, which is also highly sensitive and involves the same countries. Neither side suggests that the new complaints will affect the Doha Round (although a developing-country comment is that they could usefully encourage tighter rules on support by developed countries to their high-tech industries). Moreover, it is arguably preferable that multilateral trade rules be enforced and reviewed multilaterally rather than ignored through a private deal between the world's two leading trade powers.

CONCLUSION: While the United States and the EU may yet patch up their differences over subsidies to Airbus and Boeing during consultations in the coming weeks, it is more likely that WTO rules and dispute procedures will be brought fully into play. The eventual consequences could be far-reaching, but will emerge only over the next several years.

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